

Message Text

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ACTION PM-07

INFO OCT-01 EUR-25 ADP-00 CIAE-00 DODE-00 H-02 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 USIA-12

TRSE-00 OMB-01 ACDA-19 IO-13 MBFR-03 SAJ-01 RSR-01

/128 W

----- 027445

R 221811 Z JUN 73

FM AMEMBASSY BONN

TO SECSTATE WASHDC 5859

INFO CINCUSAREUR HEIDELBERG

CINCUSAFE RAMSTEIN

CINCEUR VAIHINGEN

C O N F I D E N T I A L SECTION 01 OF 02 BONN 08957

E. O. 11652; GDS

TAGS: MARR, GW, EGEN, NATO

SUBJECT: LAND TAXES - FRG AND OFFSET

REF: STATE 062094

1. SUMMARY: IN DISCUSSION OF LAND TAX ON NON-APPROPRIATED FUND ACTIVITIES AND ON FAMILY HOUSING, THE GERMANS ADHERED TO THEIR LEGAL POSITION RE THE TAX ON NAF PROPERTY BUT PROPOSED THAT THE AMOUNT CLAIMED BE COVERED UNDER THE OFFSET AGREEMENT. THEY INDICATED A NEGATIVE POSITION ON CHANGING THE LEGAL BASIS FOR THE LAND TAX CLAIM ON FAMILY HOUSING BUT CONVEYED THE IMPRESSION THEY MIGHT BE RESPONSIVE TO A US PROPOSAL THAT THIS AMOUNT ALSO BE INCLUDED UNDER OFFSET. END SUMMARY.

2. EMBASSY AND USAREUR REPS MET WITH GERMAN OFFICIALS OF FONOFF AND FINANCE MINISTRY MAY 23 AT REQUEST OF DREHER (DEPUTY LEGAL ADVISOR OF FONOFF) TO DISCUSS LAND TAX PROBLEM.

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3. DREHER SAID FRG HAD REVIEWED EMBASSY NOTE ON THIS SUBJECT CAREFULLY AND HAD TAKEN INTO ACCOUNT COMMENTS BY MINISTER CASH IN HIS PRESENTATION TO VAN WELL ON APRIL 10. GERMAN AUTHORITIES RECOGNIZE THE IMPORTANCE OF SEEING THE MATTER IN ITS BROADER POLITICAL CONTEXT APART FROM LEGAL TECHNICALITIES. FROM A STRICTLY TECHNICAL STANDPOINT, THE GERMAN SIDE HAD EXAMINED THE LEGAL SITUATION IN THE LIGHT OF THE EMBASSY'S MEMORANDUM, BUT THE GERMAN'S ADHERE TO THEIR PREVIOUS POSITION. SINCE BOTH SIDES WANT TO FIND A SOLUTION, DREHER SUGGESTED THAT DEBATE OVER LEGAL INTERPRETATION OF ARTICLE 63 OF THE SA BE SET ASIDE AND THAT A PRAGMATIC SOLUTION BE SOUGHT.

4. DREHER INDICATED THAT THE PROPOSAL HE HAS IN MIND WOULD COVER THE NON- APPROPRIATED FUND (NAF) PROPERTY ISSUE, BUT NOT THE TAX ON FAMILY HOUSING. THE GERMAN SIDE ATTACHES GREAT POLITICAL WEIGHT TO THE FACT THAT THE ARRANGEMENTS SPECIFIED IN THE SA CONCERNING THESE FINANCIAL MATTERS WERE AMONG THE FEW WHERE THE GERMANS FELT THEY DERIVED SOME FINANCIAL IMPROVEMENT FROM THE SA COMPARED WITH THE PREVIOUS OCCUPATION AND FORCES CONVENTION PERIOD; ACCORDINGLY, THEY SEE THE PROPOSAL TO USE THE 1954 TAX AGREEMENT TO CHANGE THE PATTERN OF TAX PAYMENTS AS INVOLVING MATTERS WITH HIGH DOMESTIC POLITICAL SIGNIFICANCE WHICH COULD ONLY BE UNDERTAKEN AFTER CONSIDERATION BY THE CHANCELLOR AND CABINET. DREHER STATED THAT ALTHOUGH NEITHER THE FOREIGN MINISTER NOR THE MINISTER OF FINANCE HAD BEEN CONSULTED PERSONALLY, NONE OF THE REPRESENTATIVES AT THE MEETING THOUGHT THEIR MINISTERS WOULD CONCUR IN DEALING WITH THE TAX ON FAMILY HOUSING UNDER THE 1954 AGREEMENT.

5. DREHER THEN SAID THAT GERMAN OFFICIALS HAVE CONCLUDED THAT IN THE SHORT RUN THE BEST WAY OF DEALING WITH THE TAX CLAIM INVOLVING NAF ACTIVITIES WOULD BE TO PUT THE AMOUNT CLAIMED UNDER THE OFFSET AGREEMENT WHICH IS CURRENTLY BEING CONSIDERED. HE INDICATED THAT THIS WOULD BE EFFECTIVE THROUGH THE PERIOD OF THE NEXT AGREEMENT AND THAT IN THE MEANWHILE THE FRG IS CONSIDERING CONFIDENTIAL

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PROPOSING A CHANGE IN THE GERMAN LAND TAX LEGISLATION WHICH WOULD INCLUDE RELIEF FROM LAND TAX ON ALL INSTALLATIONS OTHER THAN FAMILY HOUSING. DREHER NOTED THAT THE LEGISLATIVE PROPOSAL HAD NOT BEEN FULLY STAFFED OUT AND THAT OPPOSITION COULD ARISE AT SEVERAL POINTS WHICH MIGHT KILL IT.

6. EMBASSY REP RESPONDED THAT US SIDE HAD NO INSTRUCTIONS WHICH WOULD PERMIT DISCUSSION OF OFFSET AND THAT ACCORDINGLY IT COULD ONLY LISTEN TO GERMAN SUGGESTIONS AND REPORT THEM TO WASHINGTON. HE EMPHASIZED, HOWEVER, THAT AS INDICATED IN US PRESENTATION, WE FELT THAT WE

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TO SECSTATE WASHDC 5860
INFO CINCUSAREUR HEIDELBERG
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C O N F I D E N T I A L SECTION 02 OF 02 BONN 08957

HAVE LEGAL POSITION REGARDING TAX ON NAF ACTIVITIES WHICH WE ASSUME FRG OFFICIALS WILL FULLY TAKE INTO ACCOUNT. FURTHER, HE NOTED THE APPARENT ANOMALY WHICH WOULD EXIST IF THE GERMAN SIDE UNDERTOOK TO RECOGNIZE THE POLITICAL IMPORTANCE OF THE NAF TAX ISSUE BUT NOT THAT INVOLVING FAMILY HOUSING.

7. RUMPF (FONOFF LEGAL DEPARTMENT) COUNTERED THAT GERMAN SIDE RECOGNIZES DIFFERENT LEGAL SITUATION WITH RESPECT TO THE TWO TYPES OF TAXES. WITH REGARD TO THE NAF PROPERTY, THEY SEE IT AS AN INSOLUABLE LEGAL PROBLEM WHICH NEEDS A POLITICAL SOLUTION. THE TAX ON FAMILY HOUSING, HOWEVER, HAS NO SUCH LEGAL ASPECTS.

8. IN THE COURSE OF HIS COMMENTS, RUMPF SEEMED TO CON-
VEY IMPRESSION THAT WHEREAS GERMAN SIDE WAS UNABLE TO
GIVE US ANY ENCOURAGEMENT THAT OUR PROPOSAL FOR DIRECT
RELIEF FROM THE FAMILY HOUSING TAX MEETS WITH A
FAVORABLE REACTION, THAT THEY WOULD UNDERSTAND IT IF THE
USG FOR ITS PART RAISED THE ISSUE ALSO IN TERMS OF THE
OFFSET AGREEMENT. THE OTHER MEMBERS OF THE GERMAN

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GROUP APPEARED TO SHARE HIS IMPRESSION.

9. EMBASSY COMMENT: THE GERMAN REPS WERE FAMILIAR WITH
THE CASEY- HERMES OFFSET DISCUSSION ON MAY 1. APPARENTLY
THEY SEE SITUATION AS ONE WHERE WE ARE RAISING IN EFFECT
TAXES ON TWO CATEGORIES OF PROPERTY, HAVING A LEGAL
POSITION TO ASSERT RE NAF AND NONE ON FAMILY HOUSING.
AS FAR AS NAF IS CONCERNED THE GERMANS CONSIDER THAT
THEY ARE SUGGESTING A PRACTICAL DEVICE FOR ACCOMPLISH-
ING THE ESSENTIAL OBJECTIVE SOUGHT BY THE USG, I. E.,
NONPAYMENT OF THE TAXES USING THE OFFSET AGREEMENT TO
PROTECT THE GERMAN GOVERNMENT FROM ADVERSE CRITICISM
WHICH THEY FEEL THEY WOULD DRAW IF THEY MADE A CONCES-
SION TO OUR LEGAL ARGUMENTS.

10. WHILE THE EMBASSY HAS NOT YET BEEN INFORMED RE
CURRENT WASHINGTON PLANNING RE COMPONENTS OF THE OFFSET
PACKAGE, THERE ARE OBVIOUS PRACTICAL ADVANTAGES IN THE
IDEA OF ATTEMPTING TO RESOLVE BOTH TAX ISSUES IN THE
OFFSET CONTEXT. IN THE NAF SITUATION, WE ARE FACED
WITH A DISPUTE HAVING SIGNIFICANT POLITICAL INTEREST IN
BOTH THE US AND IN THE FRG. IT IS OF SUCH COMPLEXITY
THAT IT IS LIKELY TO CONTINUE TO CONSUME CONSIDERABLE
TIME OF US OFFICIALS IN THE FUTURE IF NOT RESOLVED.

11. AS DISCUSSED WITH ASSISTANT LEGAL ADVISER FIELDS
IN HEIDELBERG ON JUNE 5, ONE ASPECT OF THE PROPOSAL
WHICH WOULD NEED TO BE DEALT WITH WOULD BE TO OBTAIN
ADEQUATE ASSURANCE THAT THE NAF TAX ISSUE WILL NOT BE
PRESSED IN THE FUTURE BY THE FRG EVEN THOUGH THE OFFSET
AGREEMENT MIGHT TERMINATE AND THE ENVISAGED LEGISLATION
EXEMPTING THE FACILITIES DOES NOT MATERIALIZE.

12. IT SHOULD FURTHER BE NOTED THAT AN IMPEDIMENT TO
RESOLUTION OF THESE PARTICULAR ISSUES BY CUSTOMARY
BILATERAL NEGOTIATIONS IS GERMAN CONCERN THAT ANY CON-
CESSIONS THEY MAKE TO THE USG INVOLVING INTERPRETATION
OF THE SUPPLEMENTARY AGREEMENT WILL ALSO BE CLAIMED BY
OTHER SENDING STATES. A REAL BASIS FOR THIS REACTION
EXISTS, AS REFLECTED IN THE FACT THAT MINISTER CASH HAS
RECEIVED A LETTER FROM THE BRITISH EMBASSY PROPOSING A
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MEETING OF THE SENDING STATES TO CONSIDER A JOINT POSITION ON THE LAND TAX MATTER. WE HAVE REASON TO BELIEVE THE SENDING STATES APPROACH MAY BE TO SEEK REVISION OF ARTICLE 63(4)(D)(II) OF THE SA OR INTERPRETATION TO END THESE PAYMENTS. SINCE OUR SITUATION WITH RESPECT TO THE NAF ISSUE IS BETTER THAN THAT OF THE OTHER SENDING STATES, JOINT ACTION IN THIS PARTICULAR MATTER IS SOMEWHAT INCONVENIENT AND WOULD NOT NECESSARILY ASSIST THE US EFFORT.

13. THE EMBASSY WILL AWAIT FURTHER INSTRUCTIONS REGARDING A RESPONSE TO THE FRG ON THE ABOVE MATTER.
HILLENBRAND

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Disposition Approved on Date:
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Disposition Date: 28 MAY 2004
Disposition Event:
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